

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

RYDER INTEGRATED LOGISTICS, INC.¹

Employer

and

CASE 7-RC-22373

**LOCAL 337, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO,**

Petitioner

APPEARANCES:

David W. Miller and Michael Burns, Attorneys, of Indianapolis, Indiana, for the Employer
Daniel Dengel, of Detroit, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board had delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The name of the Employer appears in the caption as amended at the hearing.

² The Employer filed a brief, which was carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The parties stipulated to the appropriateness of the petitioned-for unit of approximately 20 full-time and regular part-time truck drivers, helpers, warehouse employees, parts drop employees, and dispatchers employed by the Employer at its Canton, Michigan facility. However, the Employer contends that no election should be held during the pendency of its bid to renew its contract with the only customer serviced by the Canton facility. I am unconvinced under the instant circumstances that it is imminent and certain that the Employer will lose the bid, or that even if it loses the bid the Canton facility will necessarily close. Consequently, I believe the interest of public policy is served by continuing to process the petition.

The Employer is a national truck transportation company with a carrier logistics center located at 41104 Capital Avenue, Canton, Michigan. The Canton facility is leased by the Employer and its only contract is with the Xerox Corporation. Pursuant to the contract, The Employer delivers Xerox photocopiers purchased from Xerox by customers in Michigan and northwest Ohio. The Employer also supplies Xerox technicians with parts; Xerox technicians are not Ryder employees.

Xerox initially contracted with the Employer about 15 years ago. Since that time, the contract was either renewed or Xerox and the Employer negotiated another contract. The current contract was entered into on October 10, 2000, and was set to expire in April 2002. The contract provides for two, one-year renewal periods. Xerox renewed the contract and it now expires on April 8, 2003. An addendum to the contract was signed on January 31, 2001, which allowed Xerox to terminate the contract with 30 days notice if the Employer failed to comply with the contract.

In February 2002, Xerox placed the Employer on probation because Xerox was unhappy with the level of service it was receiving from the Canton facility and the excessive number of complaints about the Employer's drivers. In probationary status, the Employer had 90 days to correct all of the issues raised by Xerox, and the Employer had to implement procedures to ensure that the issues would not reoccur. The probation ended in April 2002 and Xerox did not take any further corrective action, and indeed renewed the contract for another year.

On November 4, 2002, 11 days before the petition was filed, Xerox announced it would not automatically renew the contract with the Employer for a second time and instead would solicit requests for bids from vendors, including the Employer. This was the first occasion during the contractual relationship between the Employer and Xerox at the Canton facility that Xerox had opened up the bidding process to outside vendors. The

bid period closed on November 29, 2002. The Employer and three other vendors have submitted bids. Xerox is expected to announce who will receive the contract on or before January 31, 2003.

The Employer informed its employees by letter on December 3, 2002, that Xerox was soliciting bids. If a vendor other than the Employer receives the contract, there is nothing in the bid which requires the vendor to operate from the same location or hire the current employees.

When it is contended that a petitioned-for unit of employees is likely to cease its existence, the Board must decide if it serves the interest of public policy to conduct an election in what may be a short-lived unit. In making this decision, the Board considers the certainty of the imminent cessation of business, inconsistent acts by the Employer suggesting a longer existence, and related factors. *Cal-Neva Lodge*, 235 NLRB 1167 (1978).

"The Board has consistently held that it will not conduct an election at a time when a permanent layoff is imminent and certain." *Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992). This does not require absolute certainty. *Larson Plywood Co.*, 223 NLRB 1161 (1976). In *Larson*, the stockholders and board of directors passed a resolution directing the corporation to sell all assets within 90 days of the meeting. The Board rejected the argument that the liquidation resolution was not "imminent and certain" because it could be revoked. On the other hand, the Board does require that the cessation of business not be speculative. *Norfolk Maintenance Corp.*, 310 NLRB 527 (1993) (citing *Clark Construction Co.*, 129 NLRB 1348 (1960)).

In the instant case, the evidence that the Employer may cease operations on April 8, 2003 is speculative. The Employer has submitted a bid to continue its contract with Xerox. By submitting a bid, the Employer is seeking to maintain operations at the Canton facility, and Xerox has not advised the Employer that its bid has been rejected or has little chance of success. Furthermore, the record is silent as to whether the Employer may seek contracts with other customers to continue operations at the Canton facility if it is not successful with the Xerox bid. Since the Employer will continue to be bound by its lease obligations at the Canton facility, it would seem likely the Employer would bid on other work if it should lose the Xerox contract. Under the circumstances, there is nothing imminent or certain regarding the continued viability of operations at the Canton facility. Consequently, it serves public policy to continue processing the instant petition and direct an election.

5. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All truck drivers, helpers, warehouse employees, parts drop employees, and dispatchers employed by the Employer at and out of its facility located at 41104 Capital Avenue, Canton, Michigan; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

Those eligible to vote shall vote as to whether or not they wish to be represented for collective bargaining purposes by Local 337, International Brotherhood of Teamsters, AFL-CIO.

Dated at Detroit, Michigan, this 24th day of December 2002.

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board
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Classification

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